

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

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4 KENYA N. SCOTT,

5 Plaintiff,

6 v.

7 SOCIAL SECURITY ADMINISTRATION,

8 Defendant.

Case No. 2:17-cv-02557-RFB-CWH

REPORT & RECOMMENDATION

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10 Presently before this Court is a referral (ECF No. 11) from the United States Court of
11 Appeals for the Ninth Circuit. The Court previously considered the referral and mistakenly
12 issued an order (ECF No. 12), instead of a report and recommendation. The Court will vacate the
13 previous order.

14 The Ninth Circuit has instructed this Court to determine whether Plaintiff's *in forma*
15 *pauperis* status should continue for her appeal. An appeal may not be taken *in forma pauperis* if
16 the trial court certifies in writing that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). An
17 appeal's good faith requirement is satisfied if it seeks review of any issue that is "not frivolous."
18 *Gardner v. Pogue*, 558 F.2d 548, 551 (9th Cir. 1977). The Ninth Circuit has previously held that
19 "[i]f at least one issue or claim is found to be non-frivolous, leave to proceed in forma pauperis on
20 appeal must be granted for the case as a whole." *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092
21 (9th Cir. 2002).

22 On October 11, 2017, the Court granted Plaintiff's application to proceed *in forma*
23 *pauperis* (ECF No. 4), finding that Plaintiff was unable to pay the filing fee in District Court. In
24 the same order, the Court also ordered that Plaintiff's complaint be dismissed without prejudice
25 for failure to state a claim upon which relief can be granted. Plaintiff was given thirty days in
26 which to file an amended complaint. Plaintiff did not file an amended complaint, but on
27 November 14, 2017, did file a four-line notice to the Court (ECF No. 6) that addressed some, but
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1 not all, of the deficiencies noted in her complaint. On December 1, 2017, Judge Hoffman issued
2 a report and recommendation (ECF No. 7) that Plaintiff’s complaint be dismissed without
3 prejudice. Plaintiff did not file an objection. On January 22, 2018, Judge Boulware entered an
4 order accepting and adopting the report and recommendation. ECF No. 8. The case was then
5 closed.

6 On March 23, 2018, Plaintiff filed a notice of appeal (ECF No. 9), which claims that “the
7 judge’s findings and ruling are insufficient.” Plaintiff’s notice of appeal re-alleges that her social
8 security benefits were improperly denied, but does not argue that any specific aspect of Judge
9 Boulware’s order dismissing her complaint was erroneous. Considering the lack of any specific
10 objection to the Court’s orders, as well as Plaintiff’s failure to object to the report and
11 recommendation, the Court finds Plaintiff’s appeal is frivolous. The Court will therefore
12 recommend that Plaintiff should not be granted *in forma pauperis* status for her appeal.

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ORDER AND RECOMMENDATION

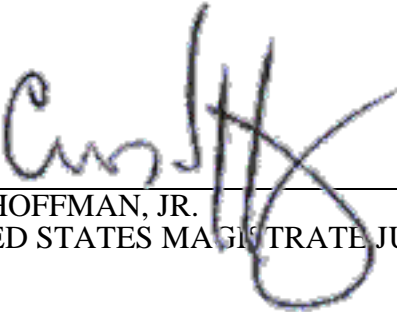
IT IS THEREFORE ORDERED that the Court’s previous order (ECF No. 12) is VACATED.

IT IS HEREBY RECOMMENDED that Plaintiff’s *in forma pauperis* status be revoked for purposes of her appeal.

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court’s order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED: April 5, 2018


C.W. HOFFMAN, JR.
UNITED STATES MAGISTRATE JUDGE